

**Notice of Allowability**

Application No.

10/609,084

Applicant(s)

LEE ET AL.

Examiner

Umamaheswari Ramachandran

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 8/9/2007.
2. ☒ The allowed claim(s) is/are 17-20, 23, 25, 27-34, 36-41 renumbered as 1-20.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☒ None of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date 5/14/2007; 7/25/2007
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

## **DETAILED ACTION**

### **Application Priority**

This application is a CON of 09/795,073, 02/26/2001, PAT 6,586,387 which is a CON of 09/242,658, 2/9/1999 ABN which is a 371 of PCT/EP97/04795, 09/03/1997 and the claim for foreign priority (Switzerland 2202/96, 09/5/1996) is acknowledged. The office has not received any of the certified copies of the foreign priority application.

### **REASONS FOR ALLOWANCE**

The objection to claims 22, 24 and 26 are withdrawn due to the cancellation of claims 22, 24 and 26. The objection to claim 17 is withdrawn due to the amendment of the claim. The rejection of claims 17-37 under 35 U.S.C. 112, first paragraph, is withdrawn due to the amendment of claim 17. Claims 17-20, 23, 25, 27-34, 36-41 are free of prior art and are ready for allowance. The claims will be renumbered as 1-20.

The following is an examiner's statement of reasons for allowance:

The claims 17-20, 23, 25, 27-34, 36-37, 39-41 are directed to a process for the control of weeds in cultivations of useful plants which are resistant to a phospho-herbicide comprising applying a herbicidally effective amount of a composition containing a phosphoherbicide selected from glufosinate or glyphosate and at least one further herbicide selected from the group consisting of prosulfuron, primisulfuron, dicamba, pyridate, dimethenamide and its S-enantiomer, metolachlor and its S-enantiomer, propaquizafop, atrazine, and terbuthylazine to the useful plant or its habitat wherein said further herbicide is present in an amount sufficient to provide an increase in selectivity for the useful plants wherein the useful plants would show greater injury if

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said further herbicide were omitted from said composition with the provisos that compositions containing glufosinate and metolachlor, glufosinate and atrazine, glufosinate and a mixture of metolachlor and atrazine, as well as or glufosinate and a mixture of atrazine and dicamba are not used in glufosinate-resistant maize; compositions containing glyphosate and atrazine are not used in glyphosate-resistant maize and compositions containing glyphosate and metolachlor or glyphosate and dimethenamide are not used in glyphosate-resistant soya. Claim 38 is directed to a process for the control of weeds in a cultivation of maize which is resistant to glyphosate comprising applying a herbicidally effective amount of a composition containing glyphosate, atrazine and a third herbicide from the group consisting of dicamba, metolachlor and its s-enantiomer. The claims are allowable as they are free of prior art and due to the showing of Applicants' declaration (Documents 1-5, received Apr 4 2002) resulting in less injury to the plants in the presence of second herbicides when administered along with glyphosate or glufosinate herbicide. The closest prior art of record to the process of control of weeds comprising administering glyphosate or glufosinate along with a second herbicide are (1) De Gennaro et al. (U.S. 6,046,134), (2) Watson et al. (U.S. 5,221,314), (3) Flint (Weed Science, 1989, Vol 37, 12-18).

De Gennaro et al. teach herbicidal mixtures comprising cyclohexanedione compounds for controlling the growth of undesired vegetation in a locus like corn (see Abstract, col. 18, claims 1, 8, 10). The reference further teaches that mixtures can additionally be used in combination with other commercial herbicides such as sulfuron compounds, atrazine, dicamba, metolachlor, glyphosate, glufosinate, pyridate etc (col.

8, lines 41-67, col. 9, line 1). The reference does not teach a process for the control of weeds in plants which are resistant to a phospho-herbicide comprising applying a herbicidally effective amount of a composition containing a phosphoherbicide selected from glufosinate or glyphosate and at least one further herbicide selected from prosulfuron, primisulfuron, dicamba, pyridate, dimethenamide and its S-enantiomer, metolachlor and its S-enantiomer, propaquizafop, atrazine, and terbuthylazine to the useful plant wherein said further herbicide is present in an amount sufficient to provide an increase in selectivity for the useful plants wherein the useful plants would show greater injury if said further herbicide were omitted from said composition. The declarations submitted by the Applicants' show the decrease in injury to the phospho-herbicide resistant plants when second herbicide is co-administered with glyphosate or glufosinate. Therefore, there is no anticipation or motivation of teaching a process of controlling weeds in phospho-herbicide resistant plants comprising administering glyphosate or glufosinate along with a second herbicide listed in claim 17 of the instant application to provide an increase in selectivity for the useful plants wherein the useful plants would show greater injury if said further herbicide were omitted from said composition.

Watson et al. teach a process for controlling velvetleaf comprising applying an herbicidally effective amount of synergistic herbicidal composition of chemical herbicide selected from atrazine, trisulfuron, glyphosate, fomesafen etc (col. 12, claim 3). The reference does not teach a combination of glyphosate and a second herbicide in the process for controlling weeds. Therefore, there is no anticipation or motivation of

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teaching a process of controlling weeds in phospho-herbicide resistant plants comprising administering glyphosate or glufosinate along with a second herbicide listed in claim 17 of the instant application to provide an increase in selectivity for the useful plants wherein the useful plants would show greater injury if said further herbicide were omitted from said composition.

Flint et al. teach application of glyphosate along with dicamba in a process to control field bindweed (see Abstract). The reference does not teach the process in phospho-herbicide resistant plants. The reference does not demonstrate that there is decrease in injury to the phospho-herbicide resistant plants when second herbicide is co-administered with glyphosate or glufosinate. Therefore, there is no anticipation or motivation of teaching a process of controlling weeds in phospho-herbicide resistant plants comprising administering glyphosate or glufosinate along with a second herbicide listed in claim 17 of the instant application to provide an increase in selectivity for the useful plants wherein the useful plants would show greater injury if said further herbicide were omitted from said composition.

The claims are allowable over the closest art of record because they do not teach, disclose nor make obvious the claimed process of controlling weeds in phospho-herbicide resistant plants comprising administering glyphosate or glufosinate along with a second herbicide listed in claim 17 of the instant application to provide an increase in selectivity for the useful plants wherein the useful plants would show greater injury if said further herbicide were omitted from said composition

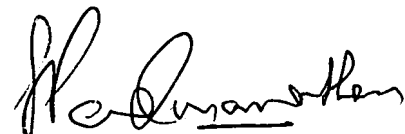
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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Umamaheswari Ramachandran whose telephone number is 571-272-9926. The examiner can normally be reached on M-F 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER

10/14/07